

**FILED**

2017 JAN 17 AM 9:38

MARY L. SWAIN  
BUTLER COUNTY  
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO**

**Bank of America, N.A.**

**Plaintiff,**

**vs.**

**Gregory C. Vanover, et al.**

**Defendants.**

**Case No. CV 2016 12 2640**

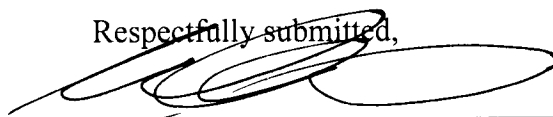
**Judge Craig D. Hedric**

**MOTION TO DISMISS  
PLAINTIFF'S CLAIMS UNDER  
RULE 41(A)(2)**

Plaintiff respectfully moves for an order dismissing this action under Rule 41(A)(2) of the Ohio Rules of Civil Procedure, without prejudice and at Plaintiff's costs, for the reason that Plaintiff has elected not to continue prosecuting this action at this time.

Plaintiff moves for an order of dismissal to avoid the possibility of voluntarily dismissing this action twice under Rule 41(A)(1), which might result in an adjudication upon the merits. See, e.g., *EMC Mortgage Corp. v. Jenkins*, 164 Ohio App.3d 240 (10th Dist. 2005); see also *Olynyk v. Scoles*, 114 Ohio St.3d 56 (2007) (an order of dismissal under Rule 41(A)(2) does not count as a dismissal under the double-dismissal rule). The risk of inadvertently dismissing an action twice by notice is significant in the foreclosure context. It is not unusual for a foreclosure action to be dismissed and later filed again, sometimes by a different law firm, because of a loss mitigation agreement, bankruptcy filing, or some other reason relevant to a foreclosure action, such as a transfer of the loan or the servicing rights to the loan. As a result, Plaintiff respectfully requests an order of dismissal under Rule 41(A)(2).

Respectfully submitted,



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Michael E. Carleton (0083352)  
Melissa N. Hamble fka Melissa N. Meinhart  
(0083909)  
Angela D. Kirk (0075177)  
Jacqueline M. Wirtz (0090268)  
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Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Motion to Dismiss Plaintiff's Claims Under Rule 41(A)(2) was sent to the following by ordinary U.S. Mail, postage prepaid, on the date indicated below:

Gregory C. Vanover, 5100 Fairfield Avenue, Fairfield, OH 45014

Jane Doe, Name Unknown, the Unknown Spouse of Gregory C. Vanover (if any), 5100 Fairfield Avenue, Fairfield, OH 45014

Honorable Craig D. Hedric, Government Services Center, 315 High Street, Hamilton, OH 45011



\_\_\_\_\_  
Michael E. Carleton  
Melissa N. Hamble fka Melissa N. Meinhart  
Angela D. Kirk  
Jacqueline M. Wirtz  
Kyle E. Timken  
Matthew P. Curry

\_\_\_\_\_  
January 15, 2017

Dated



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January 13, 2017

OHIO-Butler County Court of Common Pleas  
Attention: Clerk's Office  
Government Services Center  
315 High Street  
Hamilton, OH 45011

Re: Bank of America, N.A. v.  
Gregory C. Vanover, et al.  
Case No. CV 2016 12 2640  
Our File No. 16-030980

Dear Sir/Madam:

Enclosed are the following:

- an original and one (1) copy of a Motion to Dismiss Plaintiff's Claims Under Rule 41(A)(2);
- an original and one (1) copy of an Order Dismissing Plaintiff's Claims; and
- a self-addressed, stamped envelope.

Please file the Motion with the Court and return a file-stamped copy to me in the enclosed self-addressed, stamped envelope.

Very truly yours,

Manley Deas Kochalski LLC

Enclosure

16-030980\_ERG